



# City of Loma Linda Official Report

Floyd Petersen, Mayor  
Stan Brauer, Mayor pro tempore  
Robert Christman, Councilmember  
Robert Ziprick, Councilmember  
Charles Umeda, Councilmember

COUNCIL AGENDA: October 25, 2005  
TO: City Council  
FROM: Dennis R. Halloway, City Manager  
SUBJECT: 401A Money Purchase Plan

## **RECOMMENDATION**

It is recommended that the City Council approve a resolution establishing a 401 Money Purchase Plan to be administered by the International City Management Association Retirement Corporation (ICMARC).

## **BACKGROUND**

Currently the city has a 457 Retirement plan available to all city employees. 457 plans have an annual limit to the amount that can be deferred. With the addition of a 401 plan employees will be able to defer additional amounts of income for retirement.

## **ANALYSIS**

The 401 plan is beneficial to employees as well as City Council. It will allow those who are at the maximum deferral with 457 to put away additional funds for retirement.

## **ENVIRONMENTAL**

None

## **FINANCIAL IMPACT**

None

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOMA LINDA,  
CALIFORNIA, RELATING TO A MONEY PURCHASE PLAN

WHEREAS, the City of Loma Linda has employees rendering valuable services; and,

WHEREAS, the establishment of a money purchase retirement plan benefits employees by providing funds for retirement and funds for their beneficiaries in the event of death; and

WHEREAS, the City of Loma Linda desires that its money purchase retirement plan be administered by the ICMA Retirement Corporation and that the funds held in such plan be invested in the Vantage Trust, a trust established by public employers for the collective investment of funds held under their retirement and deferred compensation plans;

NOW, THEREFORE, be it resolved by the City Council of the City of Loma Linda that the City of Loma Linda hereby establishes or has established a money purchase retirement plan (the "Plan") in the form of the ICMA Retirement Corporation Governmental Money Purchase Plan & Trust, pursuant to the specific provisions of the Adoption Agreement attached hereto as Exhibit A. The Plan shall be maintained for the exclusive benefit of eligible employees and their beneficiaries; and

BE IT FURTHER RESOLVED that the City of Loma Linda hereby executes the Declaration of Trust of the Vantage Trust, and attached hereto as Exhibit B, intending this execution to be operative with respect to any retirement or deferred compensation plan subsequently established by the City of Loma Linda, if the assets of the plan are to be invested in the Vantage Trust; and

BE IT FURTHER RESOLVED that the City of Loma Linda hereby agrees to serve as trustee under the Plan and to invest funds held under the Plan in the Vantage Trust; and

BE IT FURTHER RESOLVED that the City Manager shall be the coordinator for the plan; shall receive reports, notices, etc., from the ICMA Retirement Corporation or the Vantage Trust; shall cast, on behalf of the City of Loma Linda, any required votes under the Vantage Trust; may delegate any administrative duties relating to the Plan to appropriate departments; and

BE IT FURTHER RESOLVED that the City of Loma Linda hereby authorizes the City Manager to execute all necessary agreements with the ICMA Retirement Corporation incidental to the administration of the Plan.

PASSED, APPROVED AND ADOPTED this 25th day of October 2005 by the following vote:

Ayes:

Noes:

Abstain:

Absent:

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Floyd Petersen, Mayor

ATTEST:

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Pamela Byrnes-O'Camb, City Clerk

**ICMA RETIREMENT CORPORATION**  
**GOVERNMENTAL MONEY PURCHASE PLAN & TRUST**  
**ADOPTION AGREEMENT**

PLAN NUMBER 10- 6090

The Employer hereby establishes a Money Purchase Plan and Trust to be known as  
City of Loma Linda (the "Plan") in the form of the  
ICMA RC Governmental Money Purchase Plan and Trust.

\_\_\_\_\_

This Plan is an amendment and restatement of an existing defined contribution money purchase plan.

\_\_\_\_\_ Yes X No

If yes, please specify the name of the defined contribution money purchase plan which this Plan hereby amends and restates:

\_\_\_\_\_

- I. Employer: City of Loma Linda
- II. The Effective Date of the Plan shall be the first day of the Plan Year during which the Employer adopts the Plan, unless an alternate Effective Date is hereby specified:  
November 1, 2005
- III. Plan Year will mean:
- ( ) The twelve (12) consecutive month period which coincides with the limitation year. (See Section 5.03(g) of the Plan.)
  - (X) The twelve (12) consecutive month period commencing on January 1 and each anniversary thereof.
- IV. Normal Retirement Age shall be age 50 (not to exceed age 65).

V. ELIGIBILITY REQUIREMENTS:

1. The following group or groups of Employees are eligible to participate in the Plan:

\_\_\_\_ All Employees  
\_\_\_\_ All Full-Time Employees  
\_\_\_\_ Salaried Employees  
\_\_\_\_ Non-union Employees  
\_\_\_\_ Management Employees  
\_\_\_\_ Public Safety Employees  
\_\_\_\_ General Employees  
X Other (specify below)  
Department Heads and City Manager

The group specified must correspond to a group of the same designation that is defined in the statutes, ordinances, rules, regulations, personnel manuals or other material in effect in the state or locality of the Employer.

2. The Employer hereby waives or reduces the requirement of a twelve (12) month Period of Service for participation. The required Period of Service shall be N/A (write N/A if an Employee is eligible to participate upon employment).

If this waiver or reduction is elected, it shall apply to all Employees within the Covered Employment Classification.

3. A minimum age requirement is hereby specified for eligibility to participate. The minimum age requirement is 18 (not to exceed age 21. Write N/A if no minimum age is declared.)

VI. CONTRIBUTION PROVISIONS

1. The Employer shall contribute as follows (choose one):

(x) **Fixed Employer Contributions With Or Without Mandatory Participant Contributions.**

100% of Employee  
Performance Bonus

The Employer shall contribute on behalf of each Participant \_\_\_\_\_% of Earnings or \$\_\_\_\_\_ for the Plan Year (subject to the limitations of Article V of the Plan). A Participant is required to contribute (subject to the limitations of Article V of the Plan)

- (i) \_\_\_\_\_% of Earnings,  
(ii) \$\_\_\_\_\_, or  
(iii) a whole percentage of Earnings, as designated by the Employee in accordance with guidelines and procedures established by the Employer

\_\_\_\_\_ % of the contributions made by the Participant for the Plan Year (not including Participant contributions exceeding \_\_\_\_\_ % of Earnings or \$ \_\_\_\_\_);

PLUS \_\_\_\_\_ % of the contributions made by the Participant for the Plan Year in excess of those included in the above paragraph (but not including Participant contributions exceeding in the aggregate \_\_\_\_\_ % of Earnings or \$ \_\_\_\_\_).

Employer Contributions on behalf of a Participant for a Plan Year shall not exceed \$ \_\_\_\_\_ or \_\_\_\_\_ % of Earnings, whichever is \_\_\_\_\_ more or \_\_\_\_\_ less.

2. Each Participant may make a voluntary (unmatched), after-tax contribution, subject to the limitations of Section 4.05 and Article V of the Plan.

\_\_\_\_\_ Yes   X   No

3. Employer contributions and Participant contributions shall be contributed to the Trust in accordance with the following payment schedule:

Annual or as approved by City Council

## VII. EARNINGS

Earnings, as defined under Section 2.09 of the Plan, shall include:

- (a) Overtime

\_\_\_\_\_ Yes   X   No

- (b) Bonuses

  X   Yes \_\_\_\_\_ No

## VIII. LIMITATION ON ALLOCATIONS

If the Employer maintains or ever maintained another qualified plan in which any Participant in this Plan is (or was) a participant or could possibly become a participant, the Employer hereby agrees to limit contributions to all such plans as provided herein, if necessary in order to avoid excess contributions (as described in Sections 5.02 of the Plan).

1. If the Participant is covered under another qualified defined contribution plan maintained by the Employer, the provisions of Section 5.02(a) through (f) of the Plan will apply unless another method has been indicated below.

- ( ) Other Method. (Provide the method under which the plans will limit total Annual Additions to the Maximum Permissible Amount, and will properly reduce any excess amounts, in a manner that precludes Employer discretion.)

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2. The limitation year is the following 12-consecutive month period: January 1

IX. VESTING PROVISIONS

The Employer hereby specifies the following vesting schedule, subject to (1) the minimum vesting requirements as noted and (2) the concurrence of the Plan Administrator.

<u>Years of Service Completed</u>	<u>Percent Vesting</u>
Zero	<u>100</u> %
One	<u>      </u> %
Two	<u>      </u> %
Three	<u>      </u> %
Four	<u>      </u> %
Five	<u>      </u> %
Six	<u>      </u> %
Seven	<u>      </u> %
Eight	<u>      </u> %
Nine	<u>      </u> %
Ten	<u>      </u> %

- X. Loans are permitted under the Plan, as provided in Article XIII:

       Yes   X   No

- XI. The Employer hereby attests that it is a unit of state or local government or an agency or instrumentality of one or more units of state or local government.

- XII. The Plan Administrator hereby agrees to inform the Employer of any amendments to the Plan made pursuant to Section 14.05 of the Plan or of the discontinuance or abandonment of the Plan.

- XIII. The Employer hereby appoints the ICMA RC as the Plan Administrator pursuant to the terms and conditions of the ICMA RC GOVERNMENTAL MONEY PURCHASE PLAN & TRUST.

The Employer hereby agrees to the provisions of the Plan and Trust.

- XIV. The Employer hereby acknowledges it understands that failure to properly fill out this Adoption Agreement may result in disqualification of the Plan.
- XV. An adopting Employer may rely on an advisory letter issued by the Internal Revenue Service as evidence that the Plan is qualified under section 401 of the Internal Revenue Code.

In Witness Whereof, the Employer hereby causes this Agreement to be executed on this 25th day of October, 2005\_\_.

EMPLOYER

ICMA RC

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: City Manager

Title: \_\_\_\_\_

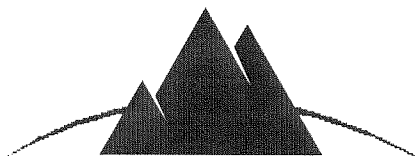
Attest: \_\_\_\_\_

Attest: \_\_\_\_\_



# **401** Governmental Money Purchase

## **PLAN & TRUST DOCUMENT**



**ICMA RETIREMENT CORPORATION**  
The Public Sector Expert

# **EGTRRA AMENDMENT**

**ICMA RETIREMENT CORPORATION  
GOVERNMENTAL MONEY PURCHASE PLAN & TRUST  
EGTRRA AMENDMENT**

**PREAMBLE**

- A. Adoption and effective date of amendment. This Amendment of the ICMA Retirement Corporation Governmental Money Purchase Plan & Trust (the "Plan") and its Adoption Agreement is adopted to reflect certain provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"). This Amendment is intended as good faith compliance with the requirements of EGTRRA and is to be construed in accordance with EGTRRA and guidance issued thereunder. Except as otherwise provided, this Amendment shall be effective as of the first day of the first Plan Year beginning after December 31, 2001 and shall end December 31, 2010, unless otherwise extended by law or otherwise.
- B. Supersession of inconsistent provisions. This Amendment shall supersede the provisions of the Plan and Adoption Agreement to the extent those provisions are inconsistent with the provisions of this Amendment.

**Section 1. Limitations on Contributions**

- A. Effective date. This Section shall be effective for Limitation Years beginning after December 31, 2001.
- B. Maximum annual addition. The maximum Annual Addition that may be contributed or allocated to a Participant's Account under the Plan for any Limitation Year shall not exceed the lesser of:
  - (i) \$40,000, as adjusted for increases in the cost-of-living under section 415(d) of the Code, or
  - (ii) One hundred percent (100%) of the Participant's Compensation for the Limitation Year.

The compensation limit referred to in (ii) shall not apply to any contribution for medical benefits after separation from service (within the meaning of section 401(h) or section 419A(f)(2) of the Code) which is otherwise treated as an Annual Addition.

**Section 2. Increase in Earnings Limit**

- A. In general. For Plan Years beginning on or after January 1, 2002, the annual Earnings of each Participant taken into account in determining all benefits provided under the Plan for any Plan Year shall not exceed \$200,000, as adjusted for increases in the cost-of-living in accordance with section 401(a)(17)(B) of the Code. Annual Earnings means Earnings during the Plan Year or such other consecutive 12-month period over which Earnings is otherwise determined under the Plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual Earnings for the determination period that begins with or within such calendar year.
- B. Prior years. If Earnings for any prior determination period are taken into account in determining a Participant's allocations or benefits for the current Plan Year, the Earnings for such prior year are subject to the applicable annual Earnings limit in effect for that prior year.

### **Section 3. Direct Rollovers of Plan Distributions**

- A. Effective date. This Section shall apply to distributions made after December 31, 2001.
- B. Modification of definition of eligible retirement plan. For purposes of the direct rollover provisions in Section 9.03 of the Plan, an eligible retirement plan shall also mean an annuity contract described in section 403(b) of the Code and an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in section 414(p) of the Code.
- C. Modification of definition of eligible rollover distribution to include after-tax employee contributions. For purposes of the direct rollover provisions in Section 9.03 of the Plan, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

### **Section 4. Rollovers From Other Plans**

Effective January 1, 2002, unless otherwise elected by the Employer in the Adoption Agreement, the Plan will accept Participant rollover contributions and/or direct rollovers of distributions (including after-tax contributions) made after December 31, 2001 that are eligible for rollover in accordance with Section 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), or 457(e)(16) of the Code, from all of the following types of plans: (1) a qualified plan described in Section 401(a) or 403(a) of the Code; (2) an annuity contract described in Section 403(b) of the Code; (3) an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state; and (4) an individual retirement account or annuity described in Section 408(a) or 408(b) of the Code (including SEPs, and SIMPLE IRAs after 2 years of participating in the SIMPLE IRA).

The amount distributed from such plan must be rolled over to this Plan no later than the sixtieth (60th) day after distribution was made from the plan, unless otherwise waived by the IRS pursuant to Section 402(c)(3) of the Code.

### **Section 5. Voluntary Participant Contributions**

The ten percent (10%) limit on Voluntary Participant Contributions under Section 4.05 of the Plan shall be increased to twenty-five percent (25%).

# **BASIC DOCUMENT**

**ICMA RETIREMENT CORPORATION  
GOVERNMENTAL MONEY PURCHASE PLAN & TRUST**

**I. PURPOSE**

The Employer hereby adopts this Plan and Trust to provide funds for its Employees' retirement, and to provide funds for their Beneficiaries in the event of death. The benefits provided in this Plan shall be paid from the Trust. The Plan and the Trust forming a part hereof are adopted and shall be maintained for the exclusive benefit of eligible Employees and their Beneficiaries. Except as provided in Sections 4.10 and 14.03, no part of the corpus or income of the Trust shall revert to the Employer or be used for or diverted to purposes other than the exclusive benefit of Participants and their Beneficiaries.

**II. DEFINITIONS**

**2.01 Account.** A separate record which shall be established and maintained under the Trust for each Participant, and which shall include all Participant subaccounts created pursuant to Article IV, plus any Participant Loan Account created pursuant to Section 13.03. Each subaccount created pursuant to Article IV shall include any earnings of the Trust and adjustments for withdrawals, and realized and unrealized gains and losses allocable thereto. The term "Account" may also refer to any of such separate subaccounts.

**2.02 Accounting Date.** Each day that the New York Stock Exchange is open for trading, and such other dates as may be determined by the Plan Administrator, as provided in Section 6.06 for valuing the Trust's assets.

**2.03 Adoption Agreement.** The separate agreement executed by the Employer through which the Employer adopts the Plan and elects among the various alternatives provided thereunder, and which upon execution, becomes an integral part of the Plan.

**2.04 Beneficiary.** The person or persons designated by the Participant who, subject to the requirements of Article XII, shall receive any benefits payable hereunder in the event of the Participant's death. The designation of such Beneficiary shall be in writing to the Plan Administrator. A Participant may designate primary and contingent Beneficiaries. Where no designated Beneficiary survives the Participant, the Participant's Beneficiary shall be his/her surviving spouse or, if none, his/her estate.

**2.05 Break in Service.** A Period of Severance of at least twelve (12) consecutive months.

In the case of an individual who is absent from work for maternity or paternity reasons, the twelve (12) consecutive month period beginning on the first anniversary of the first date of such absence shall not constitute a Break in Service. For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence (1) by reason of the pregnancy of the individual, (2) by reason of the birth of a child of the individual, (3) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or (4) for purposes of caring for such child for a period beginning immediately following such birth or placement.

**2.06 Code.** The Internal Revenue Code of 1986, as amended from time to time.

**2.07 Covered Employment Classification.** The group or groups of Employees eligible to make and/or have contributions to this Plan made on their behalf, as specified by the Employer in the Adoption Agreement.

**2.08 Disability.** A physical or mental impairment which is of such permanence and degree that, as determined by the Employer, a Participant is unable because of such impairment to perform any substantial gainful activity for which he/she is suited by virtue of his/her experience, training, or education and that has lasted, or can be expected to last, for a continuous period of not less than twelve (12) months, or can be expected to result in death. The permanence

and degree of such impairment shall be supported by medical evidence. If the Employer maintains a long-term disability plan, the definition of Disability shall be the same as the definition of disability in the longterm disability plan.

## **2.09 Earnings.**

- (a) General Rule. Earnings, which form the basis for computing Employer Contributions, are all of each Participant's W-2 earnings which are actually paid to the Participant during the Plan Year, plus any contributions made pursuant to a salary reduction agreement which are not includible in the gross income of the Employee under section 125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 403(b), 414(h)(2), or 457(b) of the Code. Unless the Employer elects otherwise in the Adoption Agreement, Earnings shall exclude overtime compensation and bonuses.
- (b) Limitation on Earnings. Notwithstanding the foregoing, effective as of the first Plan Year beginning on or after January 1, 1989, and before January 1, 1994, the annual Earnings of each Participant taken into account for determining all benefits provided under the Plan for any Plan Year shall not exceed \$200,000. This limitation shall be adjusted by the Secretary of the Treasury at the same time and in the same manner as under section 415(d) of the Code, except that the dollar increase in effect on January 1 of any calendar year is effective for years beginning in such calendar year and the first adjustment to the \$200,000 limitation is effective on January 1, 1990.

on Plan Years beginning on or after January 1, 1994, the annual Earnings of each Participant taken into account for determining all benefits provided under the Plan for any Plan Year shall not exceed \$150,000, as adjusted for increases in the cost-of-living in accordance with section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to any determination period beginning in such calendar year.

If a determination period consists of fewer than twelve (12) months, the annual Earnings limit is an amount equal to the otherwise applicable annual Earnings limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is twelve (12).

If Earnings for any prior determination period are taken into account in determining a Participant's allocations for the current Plan Year, the Earnings for such prior determination period are subject to the applicable annual Earnings limit in effect for that prior year. For this purpose, for years beginning on or after January 1, 1989, the applicable annual Earnings limit is \$200,000. In addition, in determining allocations in Plan Years beginning on or after January 1, 1994, the annual Earnings limit in effect for determination periods beginning before that date is \$150,000.

- (c) Limitations for Governmental Plans. In the case of an eligible participant in a governmental plan (within the meaning of section 414(d) of the Code), the dollar limitation shall not apply to the extent the Earnings which are allowed to be taken into account under the Plan would be reduced below the amount which was allowed to be taken into account under the Plan as in effect on July 1, 1993. For purposes of this Section, an eligible participant is an individual who first became a Participant in the Plan during a Plan Year beginning before the first Plan Year beginning after December 31, 1993.

**2.10 Effective Date.** The first day of the Plan Year during which the Employer adopts the Plan, unless the Employer elects in the Adoption Agreement an alternate date as the Effective Date of the Plan.

**2.11 Employee.** Any individual who has applied for and been hired in an employment position and who is employed by the Employer as a common law employee; provided, however, that Employee shall not include any individual who is not so recorded on the payroll records of the Employer, including any such person who is subsequently

reclassified by a court of law or regulatory body as a common law employee of the Employer. For purposes of clarification only and not to imply that the preceding sentence would otherwise cover such person, the term Employee does not include any individual who performs services for the Employer as an independent contractor, or under any other nonemployee classification.

**2.12 Employer.** The unit of state or local government or an agency or instrumentality of one (1) or more states or local governments that executes the Adoption Agreement.

**2.13 Hour of Service.** Each hour for which an Employee is paid or entitled to payment for the performance of duties for the Employer.

**2.14 Nonforfeitable Interest.** The interest of the Participant or his/her Beneficiary (whichever is applicable) in that percentage of his/her Employer Contribution Account balance which has vested pursuant to Article VII. A Participant shall, at all times, have a one hundred percent (100%) Nonforfeitable Interest in his/her Participant Contribution, Portable Benefits, and Voluntary Contribution Accounts.

**2.15 Normal Retirement Age.** The age which the Employer specifies in the Adoption Agreement. If the Employer enforces a mandatory retirement age, the Normal Retirement Age is the lesser of that mandatory age or the age specified in the Adoption Agreement.

**2.16 Participant.** An Employee or former Employee for whom contributions have been made under the Plan and who has not yet received all of the payments of benefits to which he/she is entitled under the Plan. A Participant is treated as benefiting under the Plan for any Plan Year during which the Participant received or is deemed to receive an allocation in accordance with Treas. Reg. section 1.410(b)-(3)(a).

**2.17 Period of Service.** For purposes of determining an Employee's initial or continued eligibility to participate in the Plan or the Nonforfeitable Interest in the Participant's Account balance derived from Employer Contributions, an Employee will receive credit for the aggregate of all time period(s) commencing with the Employee's first day of employment or reemployment and ending on the date a Break in Service begins. The first day of employment or reemployment is the first day the Employee performs an Hour of Service. An Employee will also receive credit for any Period of Severance of less than twelve (12) consecutive months. Fractional periods of a year will be expressed in terms of days.

Notwithstanding anything to the contrary herein, if the Plan is an amendment and restatement of a plan that previously calculated service under the hours of service method, service shall be credited in a manner that is at least as generous as that provided under Treas. Regs. section 1.410(a)-7(g).

**2.18 Period of Severance.** A continuous period of time during which the Employee is not employed by the Employer. Such period begins on the date the Employee retires, quits or is discharged, or if earlier, the twelve (12) month anniversary of the date on which the Employee was otherwise first absent from service.

**2.19 Plan.** This Plan, as established by the Employer, including any elected provisions pursuant to the Adoption Agreement.

**2.20 Plan Administrator.** The ICMA Retirement Corporation or any successor Plan Administrator.

**2.21 Plan Year.** The twelve (12) consecutive month period designated by the Employer in the Adoption Agreement.

**2.22 Trust.** The Trust created under Article VI of the Plan which shall consist of all of the assets of the Plan derived from Employer and Participant contributions under the Plan, plus any income and gains thereon, less any losses, expenses and distributions to Participants and Beneficiaries.



### III. ELIGIBILITY

**3.01 Service.** Except as provided in Sections 3.02 and 3.03 of the Plan, an Employee within the Covered Employment Classification who has completed a twelve (12) month Period of Service shall be eligible to participate in the Plan at the beginning of the payroll period next commencing thereafter. The Employer may elect in the Adoption Agreement to waive or reduce the twelve (12) month Period of Service.

If the Employer maintains the plan of a predecessor employer, service with such employer shall be treated as Service for the Employer.

**3.02 Age.** The Employer may designate a minimum age requirement, not to exceed age twenty-one (21), for participation. Such age, if any, shall be declared in the Adoption Agreement.

**3.03 Return to Covered Employment Classification.** In the event a Participant is no longer a member of Covered Employment Classification and becomes ineligible to make contributions and/or have contributions made on his/her behalf, such Employee will become eligible for contributions immediately upon returning to a Covered Employment Classification. If such Participant incurs a Break in Service, eligibility will be determined under the Break in Service rules of the Plan.

In the event an Employee who is not a member of a Covered Employment Classification becomes a member, such Employee will be eligible to participate immediately if such Employee has satisfied the minimum age and service requirements and would have otherwise previously become a Participant.

**3.04 Service Before a Break in Service.** All Periods of Service with the Employer are counted toward eligibility, including Periods of Service before a Break in Service.

### IV. CONTRIBUTIONS

**4.01 Employer Contributions.** For each Plan Year, the Employer will contribute to the Trust an amount as specified in the Adoption Agreement. The Employer's full contribution for any Plan Year shall be due and paid not later than thirty (30) working days after the close of the Plan Year. Each Participant will share in Employer Contributions for the period beginning on the date the Participant commences participation under the Plan and ending on the date on which such Employee severs employment with the Employer or is no longer a member of a Covered Employment Classification, and such contributions shall be accounted for separately in his/her Employer Contribution Account. Notwithstanding anything to the contrary herein, if so elected by the Employer in the Adoption Agreement, an Employee shall be required to make contributions as provided pursuant to Section 4.03 or 4.04 in order to be eligible for Employer Contributions to be made on his/her behalf to the Plan.

**4.02 Forfeitures.** All amounts forfeited by terminated Participants, pursuant to Section 7.06, shall be allocated to a suspense account and used to reduce dollar for dollar Employer Contributions otherwise required under the Plan for the current Plan Year and succeeding Plan Years, if necessary. Forfeitures may first be used to pay the reasonable administrative expenses of the Plan, with any remainder being applied to reduce Employer Contributions.

**4.03 Mandatory Participant Contributions.** If the Employer so elects in the Adoption Agreement, each eligible Employee shall make contributions at a prescribed rate as a requirement for his/her participation in the Plan. Once such an eligible Employee becomes a Participant hereunder, he/she shall not thereafter have the right to discontinue or vary the rate of such Mandatory Participant Contributions. Such contributions shall be accounted for separately in the Participant Contribution Account. Such Account shall be at all times nonforfeitable by the Participant.

If the Employer so elects in the Adoption Agreement, the Mandatory Participant Contributions shall be "picked up" by the Employer in accordance with Code section 414(h)(2). Any contribution picked-up under this Section shall be

treated as an employer contribution in determining the tax treatment under the Code, and shall not be included as gross income of the Participant until it is distributed.

**4.04 Matched Participant Contributions.** If the Employer so elects in the Adoption Agreement, Employer Contributions shall be made on behalf of an eligible Employee for a Plan Year only if the Employee agrees to make Matched Participant Contributions for that Plan Year. The rate of Employer Contributions shall, to the extent specified in the Adoption Agreement, be based upon the rate at which Matched Participant Contributions are made for that Plan Year. Matched Participant Contributions shall be accounted for separately in the Participant Contribution Account. Such Account shall be at all times nonforfeitable by the Participant.

**4.05 Voluntary Participant Contributions.** If the Employer so elects in the Adoption Agreement, an eligible Employee may make voluntary (unmatched) contributions under the Plan for any Plan Year in any amount up to ten percent (10%) of his/her Earnings for such Plan Year. Such contributions shall be accounted for separately in the Participant's Voluntary Contribution Account. Such Account shall be at all times nonforfeitable by the Participant.

**4.06 Deductible Employee Contributions.** The Plan will not accept deductible employee contributions which are made for a taxable year beginning after December 31, 1986. Contributions made prior to that date will be maintained in a Deductible Employee Contribution Account. The Account will share in the gains and losses under the Plan in the same manner as described in Section 6.06 of the Plan. Such Account shall be at all times nonforfeitable by the Participant.

**4.07 Military Service Contributions.** Notwithstanding any provision of the Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with section 414(u) of the Code.

If the Employer has elected in the Adoption Agreement to make loans available to Participants, loan repayments will be suspended under the Plan as permitted under section 414(u)(4) of the Code.

**4.08 Changes in Participant Election.** A Participant may elect to change his/her rate of Matched Participant Contributions or Voluntary Participant Contributions at anytime or during an election period as designated by the Employer. A Participant may discontinue such contributions at any time or during an election period as designated by the Employer.

#### **4.09 Portability of Benefits.**

- (a) An Employee within the Covered Employment Classification, whether or not he/she has satisfied the minimum age and service requirements of Article III, may transfer or roll over his/her interest in a plan qualified under section 401(a) or 403(a) of the Code to this Plan, provided:
  - (1) The distribution is on account of termination or discontinuance of the plan or the distribution becomes payable on account of the Employee's separation from service, death, disability or after the Employee attains age fifty-nine and one-half (59-1/2); and the form and nature of the distribution from the other plan satisfies the applicable requirements under the Code to make the transfer or rollover a nontaxable transaction to the Employee;
  - (2) The amount distributed from the plan is transferred to this Plan no later than the sixtieth (60th) day after distribution was made from the plan; and
  - (3) In the case of a rollover, the amount transferred to this Plan does not exceed the amount of the distribution reduced by the Employee contributions (if any) to the plan (other than accumulated deductible voluntary contributions).

Such transfer or rollover may also be through an Individual Retirement Plan qualified under section 408 of the Code where the Individual Retirement Plan was used as a conduit from the prior plan and the transfer is made in accordance with the rules provided at (1) through (3) of this paragraph and the transfer does not include any personal contributions or earnings thereon the Participant may have made to the Individual Retirement Plan.

The amount transferred shall be deposited in the Trust and shall be credited to a Portable Benefits Account. Such Account shall be one hundred percent (100%) vested in the Employee.

The Plan will accept accumulated Deductible Employee Contributions as defined in section 72(o)(5) of the Code that were distributed from a qualified retirement plan and transferred (rolled over) pursuant to section 402(a)(5), 402(a)(7), 403(a)(4), or 408(d)(3) of the Code. Notwithstanding the above, this transferred (rolled over) amount shall be deposited to the Trust and shall be credited to a Deductible Employee Contribution Account. Such Account shall be one hundred percent (100%) vested in the Employee.

- (b) An Employee within the Covered Employment Classification, whether or not he/she has satisfied the minimum age and service requirement of Article III, may, upon approval by the Employer and the Plan Administrator, transfer his/her interest in another plan maintained by the Employer that is qualified under section 401(a) of the Code to this Plan, provided the transfer is effected through a one-time irrevocable written election made by the Participant. The amount transferred shall be deposited in the Trust and shall be credited to sources that maintain the same attributes as the plan from which they are transferred. Such transfer shall not reduce the accrued years or service credited to the Participant for purposes of vesting or eligibility for any Plan benefits or features.

**4.10 Return of Employer Contributions.** Any contribution made by the Employer because of a mistake of fact must be returned to the Employer within one year of the date of contribution.

## **V. LIMITATION ON ALLOCATIONS**

### **5.01 Participants Only in This Plan.**

- (a) If the Participant does not participate in, and has never participated in another qualified plan or a welfare benefit fund, as defined in section 419(e) of the Code, maintained by the Employer, or an individual medical account, as defined by section 415(l)(2) of the Code, maintained by the Employer, which provides an Annual Addition, the amount of Annual Additions which may be credited to the Participant's Account for any Limitation Year will not exceed the lesser of the Maximum Permissible Amount or any other limitation contained in this Plan. If the Employer Contribution that would otherwise be contributed or allocated to the Participant's Account would cause the Annual Additions for the Limitation Year to exceed the Maximum Permissible Amount, the amount contributed or allocated will be reduced so that the Annual Additions for the Limitation Year will equal the Maximum Permissible Amount.
- (b) Prior to determining the Participant's actual Compensation for the Limitation Year, the Employer may determine the Maximum Permissible Amount for a Participant on the basis of a reasonable estimation of the Participant's Compensation for the Limitation Year, uniformly determined for all Participants similarly situated.
- (c) As soon as is administratively feasible after the end of the Limitation Year, the Maximum Permissible Amount for the Limitation Year will be determined on the basis of the Participant's actual Compensation for the Limitation Year.
- (d) If, pursuant to Subsection (c) or as a result of the allocation of forfeitures, there is an Excess Amount, the excess will be disposed of as follows:

- (1) Any Voluntary Participant Contributions, to the extent they would reduce the Excess Amount, will be returned to the Participant;
- (2) If after the application of paragraph (1) an Excess Amount still exists, and the Participant is covered by the Plan at the end of the Limitation Year, the Excess Amount in the Participant's Account will be used to reduce Employer Contributions (including any allocation of forfeitures) for such Participant in the next Limitation Year, and each succeeding Limitation Year if necessary;
- (3) If after the application of paragraph (1) an Excess Amount still exists, and the Participant is not covered by the Plan at the end of the Limitation Year, the Excess Amount will be held unallocated in a suspense account. The suspense account will be applied to reduce future Employer Contributions (including allocation of any forfeitures) for all remaining Participants in the next Limitation Year, and each succeeding Limitation Year if necessary;
- (4) If a suspense account is in existence at any time during a particular Limitation Year, all amounts in the suspense account must be allocated and reallocated to Participants' accounts before any Employer or any Employee contributions may be made to the Plan for that Limitation Year. Excess Amounts in a suspense account may not be distributed to Participants or former Participants.

## **5.02 Participants in Another Defined Contribution Plan.**

- (a) Unless the Employer provides other limitations in the Adoption Agreement, this Section applies if, in addition to this Plan, the Participant is covered under another qualified defined contribution plan maintained by the Employer, or a welfare benefit fund, as defined in section 419(e) of the Code, maintained by the Employer, or an individual medical account, as defined by section 415(l)(2) of the Code, maintained by the Employer, which provides an Annual Addition, during any Limitation Year. The Annual Additions which may be credited to a Participant's Account under this Plan for any such Limitation Year will not exceed the Maximum Permissible Amount reduced by the Annual Additions credited to a Participant's Account under the other plans and welfare benefit funds for the same Limitation Year. If the Annual Additions with respect to the Participant under other defined contribution plans and welfare benefit funds maintained by the Employer are less than the Maximum Permissible Amount and the Employer contribution that would otherwise be contributed or allocated to the Participant's Account under this Plan would cause the Annual Additions for the Limitation Year to exceed this limitation, the amount contributed or allocated will be reduced so that the Annual Additions under all such plans and funds for the Limitation Year will equal the Maximum Permissible Amount. If the Annual Additions with respect to the Participant under such other defined contribution plans and welfare benefit funds in the aggregate are equal to or greater than the Maximum Permissible Amount, no amount will be contributed or allocated to the Participant's Account under this Plan for the Limitation Year.
- (b) Prior to determining the Participant's actual Compensation for the Limitation Year, the Employer may determine the Maximum Permissible Amount for a Participant in the manner described in Section 5.01(b).
- (c) As soon as is administratively feasible after the end of the Limitation Year, the Maximum Permissible Amount for the Limitation Year will be determined on the basis of the Participant's actual Compensation for the Limitation Year.
- (d) If, pursuant to Subsection (c) or as a result of the allocation of forfeitures, a Participant's Annual Additions under this Plan and such other plans would result in an Excess Amount for a Limitation Year, the Excess Amount will be deemed to consist of the Annual Additions last allocated, except that Annual Additions attributable to a welfare benefit fund or individual medical account will be deemed to have

been allocated first regardless of the actual allocation date.

- (c) If an Excess Amount was allocated to a Participant on an allocation date of this Plan which coincides with an allocation date of another plan, the Excess Amount attributed to this Plan will be the product of:
  - (1) The total Excess Amount allocated as of such date, multiplied by
  - (2) The ratio of (i) the Annual Additions allocated to the Participant for the Limitation Year as of such date under this Plan to (ii) the total Annual Additions allocated to the Participant for the Limitation Year as of such date under this and all the other qualified defined contribution plans.
- (f) Any Excess Amount attributed to this Plan will be disposed in the manner described in Section 5.01(d).

**5.03 Definitions.** For the purposes of this Article, the following definitions shall apply:

- (a) **Annual Additions:** The sum of the following amounts credited to a Participant's account for the Limitation Year:
  - (1) Employer Contributions;
  - (2) Forfeitures;
  - (3) Employee contributions; and
  - (4) Allocations under a simplified employee pension.

Amounts allocated, after March 31, 1984, to an individual medical account, as defined in section 415(l)(2) of the Code, which is part of a pension or annuity plan maintained by the Employer, are treated as Annual Additions to a defined contribution plan.

For this purpose, any Excess Amount applied under Sections 5.01(d) or 5.02(f) in the Limitation Year to reduce Employer Contributions will be considered Annual Additions for such Limitation Year.

- (b) **Compensation:** A Participant's wages, salaries, and fees for professional services and other amounts received (without regard to whether an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining the Plan to the extent that the amounts are includible in gross income (including, but not limited to, bonuses, fringe benefits, and reimbursements or other expense allowances under a nonaccountable plan (as described in Treas. Reg. section 1.62-2(c))), excluding the following:
  - (1) Employer Contributions to a plan of deferred compensation which are not includible in the Employee's gross income for the taxable year in which contributed, or Employer Contributions under a simplified employee pension plan to the extent such contributions are deductible by the Employee, or any distributions from a plan of deferred compensation; and
  - (2) Other amounts which received special tax benefits, or contributions made by the Employer (whether or not under a salary reduction agreement) towards the purchase of an annuity contract described in section 403(b) of the Code (whether or not the amounts are actually excludable from the gross income of the Employee).
  - (3) Notwithstanding the above, for Limitation Years beginning after December 31, 1997, Compensation shall include:

- (a) any elective deferrals (as defined in section 402(g)(3) of the Code), and
- (b) any amount which is contributed or deferred by the Employer at the election of the Employee and which is not includible in the gross income of the Employee by reason of sections 125 or 457 of the Code.

- (4) Notwithstanding the above, for Limitation Years beginning on and after January 1, 2001, for purposes of applying the limitations described in this Article V of the Plan, Compensation paid or made available during such Limitation Years shall include elective amounts that are not includible in the gross income of the Employee by reason of section 132(f)(4) of the Code.

For purposes of applying the limitations of this Article, Compensation for a Limitation Year is the Compensation actually paid or made available during such year.

(c) **Defined Contribution Dollar Limitation:** \$30,000.

(d) **Employer:** The Employer that adopts this Plan.

(e) **Excess Amount:** The excess of the Participant's Annual Additions for the Limitation Year over the Maximum Permissible Amount.

An Excess Amount shall include allocable income. The income allocable to an Excess Amount is equal to the sum of the allocable gain or loss for the Plan Year and the allocable gain or loss for the period between the end of the Plan Year and the date of distributions (the gap period). The Plan may use any reasonable method for computing the income allocable to an Excess Amount, provided that the method is used consistently for all Participants and for all corrective distributions under the Plan for the Plan Year, and is used by the Plan for allocating income to Participants' Accounts.

(f) **Highest Average Compensation:** The average Compensation for the three (3) consecutive years of service with the Employer that produce the highest average. A year of service with the Employer is the twelve (12) consecutive month period defined as the Limitation Year in the Adoption Agreement.

(g) **Limitation Year:** A calendar year, or the twelve (12) consecutive month period elected by the Employer in the Adoption Agreement. All qualified plans maintained by the Employer must use the same Limitation Year. If the Limitation Year is amended to a different twelve (12) consecutive month period, the new Limitation Year must begin on a date within the Limitation Year in which the amendment is made.

(h) **Maximum Permissible Amount:** The maximum Annual Addition that may be contributed or allocated to a Participant's Account under the Plan for any Limitation Year shall not exceed the lesser of:

- (1) The Defined Contribution Dollar Limitation, or
- (2) Twenty-five percent (25%) of the Participant's Compensation for the Limitation Year.

If a short Limitation Year is created because of an amendment changing the Limitation Year to a different twelve (12) consecutive month period, the Maximum Permissible Amount will not exceed the Defined Contribution Dollar Limitation multiplied by the following fraction:

$$\frac{\text{Number of months in the short Limitation Year}}{12}$$

(i) **Projected Annual Benefit:** The annual retirement benefit (adjusted to an actuarially equivalent straight

life annuity if such benefit is expressed in a form other than a straight life annuity or qualified joint and survivor annuity) to which the Participant would be entitled under the terms of the plan assuming:

- (1) The Participant will continue employment until Normal Retirement Age under the plan (or current age, if later), and
- (2) The Participant's Compensation for the current Limitation Year and all other relevant factors used to determine benefits under the plan will remain constant for all future Limitation Years.

## **VI. TRUST AND INVESTMENT OF ACCOUNTS**

**6.01 Trust.** A Trust is hereby created to hold all of the assets of the Plan for the exclusive benefit of Participants and Beneficiaries, except that expenses and taxes may be paid from the Trust as provided in Section 6.03. The trustee shall be the Employer or such other person which agrees to act in that capacity hereunder.

**6.02 Investment Powers.** The trustee or the Plan Administrator, acting as agent for the trustee, shall have the powers listed in this Section with respect to investment of Trust assets, except to the extent that the investment of Trust assets is controlled by Participants, pursuant to Section 13.03.

- (a) To invest and reinvest the Trust without distinction between principal and income in common or preferred stocks, shares of regulated investment companies and other mutual funds, bonds, loans, notes, debentures, certificates of deposit, contracts with insurance companies including but not limited to insurance, individual or group annuity, deposit administration, guaranteed interest contracts, and deposits at reasonable rates of interest at banking institutions including but not limited to savings accounts and certificates of deposit. Assets of the Trust may be invested in securities that involve a higher degree of risk than investments that have demonstrated their investment performance over an extended period of time.
- (b) To invest and reinvest all or any part of the assets of the Trust in any common, collective or commingled trust fund that is maintained by a bank or other institution and that is available to Employee plans qualified under section 401 of the Code, or any successor provisions thereto, and during the period of time that an investment through any such medium shall exist, to the extent of participation of the Plan, the declaration of trust of such common, collective, or commingled trust fund shall constitute a part of this Plan.
- (c) To invest and reinvest all or any part of the assets of the Trust in any group annuity, deposit administration or guaranteed interest contract issued by an insurance company or other financial institution on a commingled or collective basis with the assets of any other plan or trust qualified under section 401(a) of the Code or any other plan described in section 401(a)(24) of the Code, and such contract may be held or issued in the name of the Plan Administrator, or such custodian as the Plan Administrator may appoint, as agent and nominee for the Employer. During the period that an investment through any such contract shall exist, to the extent of participation of the Plan, the terms and conditions of such contract shall constitute a part of the Plan.
- (d) To hold cash awaiting investment and to keep such portion of the Trust in cash or cash balances, without liability for interest, in such amounts as may from time to time be deemed to be reasonable and necessary to meet obligations under the Plan or otherwise to be in the best interests of the Plan.
- (e) To hold, to authorize the holding of, and to register any investment to the Trust in the name of the Plan, the Employer, or any nominee or agent of any of the foregoing, including the Plan Administrator, or in bearer form, to deposit or arrange for the deposit of securities in a qualified central depository even

though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by any other person, and to organize corporations or trusts under the laws of any jurisdiction for the purpose of acquiring or holding title to any property for the Trust, all with or without the addition of words or other action to indicate that property is held in a fiduciary or representative capacity but the books and records of the Plan shall at all times show that all such investments are part of the Trust.

- (f) Upon such terms as may be deemed advisable by the Employer or the Plan Administrator, as the case may be, for the protection of the interests of the Plan or for the preservation of the value of an investment, to exercise and enforce by suit for legal or equitable remedies or by other action, or to waive any right or claim on behalf of the Plan or any default in any obligation owing to the Plan, to renew, extend the time for payment of, agree to a reduction in the rate of interest on, or agree to any other modification or change in the terms of any obligation owing to the Plan, to settle, compromise, adjust, or submit to arbitration any claim or right in favor of or against the Plan, to exercise and enforce any and all rights of foreclosure, bid for property in foreclosure, and take a deed in lieu of foreclosure with or without paying consideration therefor, to commence or defend suits or other legal proceedings whenever any interest of the Plan requires it, and to represent the Plan in all suits or legal proceedings in any court of law or equity or before any body or tribunal.
- (g) To employ suitable consultants, depositories, agents, and legal counsel on behalf of the Plan.
- (h) To open and maintain any bank account or accounts in the name of the Plan, the Employer, or any nominee or agent of the foregoing, including the Plan Administrator, in any bank or banks.
- (i) To do any and all other acts that may be deemed necessary to carry out any of the powers set forth herein.

**6.03 Taxes and Expenses.** All taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws upon, or in respect to the Trust, or the income thereof, and all commissions or acquisitions or dispositions of securities and similar expenses of investment and reinvestment of the Trust, shall be paid from the Trust. Such reasonable compensation of the Plan Administrator, as may be agreed upon from time to time by the Employer and the Plan Administrator, and reimbursement for reasonable expenses incurred by the Plan Administrator in performance of its duties hereunder (including but not limited to fees for legal, accounting, investment and custodial services) shall also be paid from the Trust. However, no person who is a fiduciary within the meaning of section 3(21)(A) of ERISA and regulations promulgated thereunder, and who receives full-time pay from the Employer may receive compensation from the Trust, except for expenses properly and actually incurred.

**6.04 Payment of Benefits.** The payment of benefits from the Trust in accordance with the terms of the Plan may be made by the Plan Administrator, or by any custodian or other person so authorized by the Employer to make such disbursement. Benefits under this Plan shall be paid only if the Plan Administrator, custodian or other person decides in his/her discretion that the applicant is entitled to them. The Plan Administrator, custodian or other person shall not be liable with respect to any distribution of Trust assets made at the direction of the Employer.

**6.05 Investment Funds.** In accordance with uniform and nondiscriminatory rules established by the Employer and the Plan Administrator, the Participant may direct his/her Accounts to be invested in one (1) or more investment funds available under the Plan; provided, however, that the Participant's investment directions shall not violate any investment restrictions established by the Employer and shall not include any investment in collectibles, as defined in section 408(m) of the Code.

**6.06 Valuation of Accounts.** As of each Accounting Date, the Plan assets held in each investment fund offered shall be valued at fair market value and the investment income and gains or losses for each fund shall be determined. Such investment income and gains or losses shall be allocated proportionately among all Account balances on a fund-by-fund basis. The allocation shall be in the proportion that each such Account balance as of the immediately preceding Accounting Date bears to the total of all such Account balances as of that Accounting Date. For purposes of this



Article, all Account balances include the Account balances of all Participants and Beneficiaries.

**6.07 Participant Loan Accounts.** Participant Loan Accounts shall be invested in accordance with Section 13.03 of the Plan. Such Accounts shall not share in any investment income and gains or losses of the investment funds described in Section 6.05.

## VII. VESTING

**7.01 Vesting Schedule.** The portion of a Participant's Account attributable to Mandatory Participant Contributions, Matched Participant Contributions, or Voluntary Participant Contributions, and the earnings thereon, shall be at all times nonforfeitable by the Participant. A Participant shall have a Nonforfeitable Interest in the percentage of his/her Employer Contribution Account established under Section 4.01 determined pursuant to the schedule elected by the Employer in the Adoption Agreement.

**7.02 Crediting Periods of Service.** Except as provided in Section 7.03, all of an Employee's Periods of Service with the Employer are counted to determine the nonforfeitable percentage in the Employee's Account balance derived from Employer Contributions. If the Employer maintains the plan of a predecessor employer, service with such employer will be treated as service for the Employer.

For purposes of determining years of service and Breaks in Service for purposes of computing a Participant's nonforfeitable right to the Account balance derived from Employer Contributions, the twelve (12) consecutive month period will commence on the date the Employee first performs an hour of service and each subsequent twelve (12) consecutive month period will commence on the anniversary of such date.

**7.03 Service After Break in Service.** In the case of a Participant who has a Break in Service of at least five (5) years, all Periods of Service after such Breaks in Service will be disregarded for the purpose of determining the nonforfeitable percentage of the Employer-derived Account balance that accrued before such Break, but both pre-Break and post-Break service will count for the purposes of vesting the Employer-derived Account balance that accrues after such Break. Both Accounts will share in the earnings and losses of the fund.

In the case of a Participant who does not have a Break in Service of at least five (5) years, both the pre-Break and post-Break service will count in vesting both the pre-Break and post-Break Employer-derived Account balance.

In the case of a Participant who does not have any nonforfeitable right to the Account balance derived from Employer Contributions, years of service before a period of consecutive one (1) year Breaks in Service will not be taken into account in computing eligibility service if the number of consecutive one (1) year Breaks in Service in such period equals or exceeds the greater of five (5) or the aggregate number of years of service. Such aggregate number of years of service will not include any years of service disregarded under the preceding sentence by reason of prior Breaks in Service.

If a Participant's years of service are disregarded pursuant to the preceding paragraph, such Participant will be treated as a new Employee for eligibility purposes. If a Participant's years of service may not be disregarded pursuant to the preceding paragraph, such Participant shall continue to participate in the Plan, or, if terminated, shall participate immediately upon reemployment.

**7.04 Vesting Upon Normal Retirement Age.** Notwithstanding Section 7.01 of the Plan, a Participant shall have a Nonforfeitable Interest in his/her entire Employer Contribution Account, to the extent that the balance of such Account has not previously been forfeited pursuant to Section 7.06 of the Plan, if he/she is employed on or after his/her Normal Retirement Age.

**7.05 Vesting Upon Death or Disability.** Notwithstanding Section 7.01 of the Plan, in the event of Disability or death, a Participant or his/her Beneficiary shall have a Nonforfeitable Interest in his/her entire Employer Contribution Account, to the extent that the balance of such Account has not previously been forfeited pursuant to Section 7.06 of the Plan.

**7.06 Forfeitures.** Except as provided in Sections 7.04 and 7.05 of the Plan or as otherwise provided in this Section 7.06, a Participant who separates from service prior to obtaining full vesting shall forfeit that percentage of his/her Employer Contribution Account balance which has not vested as of the date such Participant incurs a Break in Service of five (5) consecutive years or, if earlier, the date such Participant receives, or is deemed under the provisions of Section 9.04 to have received, distribution of the entire Nonforfeitable Interest in his/her Employer Contribution Account. If a Participant receives a voluntary distribution of less than the entire vested portion of his/her Employer Contribution Account, the part of the nonvested portion that will be treated as a forfeiture is the total nonvested portion multiplied by a fraction, the numerator of which is the amount of the distribution attributable to Employer Contributions and the denominator of which is the total value of the vested Employer Contribution Account.

No forfeiture will occur solely as a result of a Participant's withdrawal of Employee Contributions.

Forfeitures shall be allocated in the manner described in Section 4.02.

**7.07 Reinstatement of Forfeitures.** If the Participant returns to the employment of the Employer before incurring a Break in Service of five (5) consecutive years, any amounts forfeited pursuant to Section 7.06 shall be reinstated to the Participant's Employer Contribution Account on the date of repayment by the Participant of the amount distributed to such Participant from his/her Employer Contribution Account; provided, however, that if such Participant forfeited his/her Account balance by reason of a deemed distribution, pursuant to Section 9.04, such amounts shall be automatically restored upon the reemployment of such Participant. Such repayment must be made before the earlier of five (5) years after the first date on which the Participant is subsequently reemployed by the Employer, or the date the Participant incurs a Break in Service of five (5) consecutive years.

## **VIII. BENEFITS CLAIM**

**8.01 Claim of Benefits.** A Participant, Employee or Beneficiary shall notify the Plan Administrator in writing of a claim of benefits under the Plan. The Plan Administrator shall take such steps as may be necessary to facilitate the payment of such benefits to the Participant, Employee or Beneficiary.

**8.02 Appeal Procedure.** If any claim for benefits is denied by the Plan Administrator, the Plan Administrator shall notify the claimant in writing of such denial, setting forth the specific reasons and citing reference to specific provisions of the Plan upon which the denial is based. An appeal period of sixty (60) days after receipt of the notification of denial shall be granted, and said notification shall advise the claimant of the appeal procedure. The claimant shall file the appeal with the Plan Administrator, whose decision shall be final, to the extent provided by Section 15.07.

## **IX. COMMENCEMENT OF BENEFITS**

**9.01 Normal and Elective Commencement of Benefits.** A Participant who retires, becomes Disabled or separates from service for any other reason may elect by written notice to the Plan Administrator to have the distribution of benefits commence on any date, provided that such distribution complies with Sections 9.02 and 9.07. Such election must be made in writing during the ninety (90) day period ending on the date as of which benefit payments are to commence. A Participant's election shall be revocable and may be amended by the Participant.

The failure of a Participant and the Participant's Spouse to consent to a distribution while a benefit is immediately distributable, within the meaning of section 9.02 of the Plan, shall be deemed to be an election to defer commencement of payment of any benefit.

**9.02 Restrictions on Immediate Distributions.** Notwithstanding anything to the contrary in Section 9.01 of the Plan, if the value of a Participant's vested Account balance exceeds the dollar limit under section 411(a)(11)(A) of the Code, and the Account balance is immediately distributable, the Participant and the Participant's Spouse (or where either has died, the survivor) must consent to any distribution of such Account balance. The consent of the Participant and the Participant's Spouse shall be obtained in writing during the ninety (90) day period ending on the date as of which benefit payments are to commence.

The Plan Administrator shall notify the Participant and the Participant's Spouse of the right to defer any distribution until the Participant's Account balance is no longer immediately distributable. Such notification shall include a general description of the material features, and an explanation of the relative values of, the optional forms of benefit available under the Plan in a manner that would satisfy section 417(a)(3) of the Code, and shall be provided no less than thirty (30) and no more than ninety (90) days before the date as of which benefit payments are to commence. However, distribution may commence less than thirty (30) days after the notice described in the preceding sentence is given, provided (i) the distribution is one to which sections 401(a)(11) and 417 of the Code do not apply or, if sections 401(a)(11) and 417 of the Code do apply, the waiver requirements of Section 12.04(a) are met; (ii) the Plan Administrator clearly informs the Participant that the Participant has a right to a period of at least thirty (30) days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option); and (iii) the Participant, after receiving the notice, affirmatively elects a distribution.

Notwithstanding the foregoing, only the Participant need consent to the commencement of a distribution in the form of the Qualified Joint and Survivor Annuity while the Account balance is immediately distributable. (Furthermore, if payment in the form of a Qualified Joint and Survivor Annuity is not required with respect to the Participant pursuant to section 12.02 of the Plan, only the Participant need consent to the distribution of an Account balance that is immediately distributable.) Neither the consent of the Participant nor the Participant's Spouse shall be required for any form of distribution to the extent that a distribution is required to satisfy section 401(a)(9) or 415 of the Code.

In addition, upon termination of this Plan if the Plan does not offer an annuity option (purchased from a commercial provider) and if the Employer does not maintain another defined contribution plan, the Participant's Account balance will, without the Participant's consent, be distributed to the Participant.

An Account balance is immediately distributable if any part of the Account balance could be distributed to the Participant (or Surviving Spouse) before the Participant attains or would have attained (if not deceased) the later of Normal Retirement Age or age sixty-two (62).

For purposes of determining the applicability of the foregoing consent requirements to distributions made before the first day of the first plan year beginning after December 31, 1988, the Participant's vested Account balance shall not include amounts attributable to accumulated deductible employee contributions within the meaning of section 72(o)(5)(B) of the Code.

### **9.03 Transfer to Another Plan.**

- (a) If a Participant becomes eligible to participate in another plan maintained by the Employer that is qualified under section 401(a) of the Code, the Plan Administrator shall, at the written election of such Participant, transfer all or part of such Participant's Account to such plan, provided the plan Administrator for such plan certifies to the Plan Administrator that its plan provides for the acceptance of such a transfer. For purposes of this Plan, any such transfer shall not be considered a distribution to the Participant subject to spousal consent as described in Section 9.02 and Article XII.

(b) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Section, a Distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover. For purposes of this Plan, any such Eligible Rollover Distribution shall be considered a distribution to the Participant subject to spousal consent as described in Section 9.02 and Article XII.

(c) Definitions. For the purposes of Subsection (b), the following definitions shall apply:

- (1) **Eligible Rollover Distribution.** Any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life or life expectancy of the Distributee or the joint lives or joint life expectancies of the Distributee and the Distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; the portion of any distribution that is not includible in gross income; and any other distribution(s) that is reasonably expected to total less than \$200 during a year.
- (2) **Eligible Retirement Plan.** An individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code (collectively, an "IRA"), an annuity plan described in section 403(a) of the Code, or a qualified trust described in section 401(a) of the Code, that accepts the Distributee's Eligible Rollover Distribution. However, in the case of an Eligible Rollover Distribution to the Surviving Spouse, an Eligible Retirement Plan is an IRA.
- (3) **Distributee.** Participant; in addition, the Participant's surviving spouse and the Participant's spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code, are Distributees with regard to the interest of the spouse or former spouse.
- (4) **Direct Rollover.** A payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

**9.04 De Minimis Accounts.** Notwithstanding the foregoing provisions of this Article, if a Participant terminates service, and the value of his/her Nonforfeitable Interest in his/her Account is not greater than the dollar limit under section 411(a)(11)(A) of the Code, the Participant's benefit shall be paid (to the extent it constitutes an Eligible Rollover Distribution) in the form of a direct rollover to the Plan Administrator's designated IRA, unless he/she affirmatively elects to receive a cash payment or a Direct Rollover in accordance with procedures established by the Plan Administrator. For purposes of this Section, if a Participant's Nonforfeitable Interest in his/her Account is zero, the Participant shall be deemed to have received a distribution of such Nonforfeitable Interest in his/her Account.

A Participant's Nonforfeitable Interest in his/her Account shall not include accumulated Deductible Employee Contributions within the meaning of Section 72(o)(5)(B) of the Code for Plan Years beginning prior to January 1, 1989.

**9.05 Withdrawal of Voluntary Contributions.** A Participant may make a written election, or if married, a Qualified Election, to withdraw a part of or the full amount of his/her Voluntary Contribution Account. Such withdrawals may be made at any time, provided that no more than two (2) such withdrawals may be made during any calendar year. No forfeiture will occur solely as the result of any such withdrawal.

**9.06 Withdrawal of Deductible Employee Contributions.** A Participant may make a written election, or if married, a Qualified Election, to withdraw a part of or the full amount of his/her Deductible Employee Contribution Account. Such withdrawals may be made at any time, provided that no more than two (2) such withdrawals may be made during any calendar year. No forfeiture will occur solely as the result of any such withdrawal.

**9.07 Latest Commencement of Benefits.** Notwithstanding anything to the contrary in this Article, benefits shall begin no later than the Participant's Required Beginning Date, as defined under Section 10.06, or as otherwise provided in Section 10.05.

## **X. DISTRIBUTION REQUIREMENTS**

### **10.01 General Rules.**

- (a) Subject to the provisions of Article XII, the requirements of this Article shall apply to any distribution of a Participant's interest and will take precedence over any inconsistent provisions of this Plan.
- (b) All distributions required under this Article shall be determined and made in accordance with the proposed regulations under section 401(a)(9) of the Code, including the minimum distribution incidental benefit requirement of section 1.401(a)(9)-2 of the proposed regulations.

**10.02 Required Beginning Date.** The entire Nonforfeitable Interest of a Participant must be distributed or begin to be distributed no later than the Participant's Required Beginning Date.

**10.03 Limits on Distribution Periods.** As of the first Distribution Calendar Year, distributions, if not made in a single-sum, may only be made over one of the following periods (or a combination thereof):

- (a) The life of the Participant.
- (b) The life of the Participant and a Designated Beneficiary.
- (c) A period certain not extending beyond the Life Expectancy of the Participant, or
- (d) A period certain not extending beyond the Joint and Last Survivor Expectancy of the Participant and a Designated Beneficiary.

**10.04 Determination of Amount to Be Distributed Each Year.** If the Participant's Nonforfeitable Interest is to be distributed in other than a single sum, the following minimum distribution rules shall apply on or after the Required Beginning Date:

- (a) Individual Account.
  - (1) If a Participant's Benefit is to be distributed over (i) a period not extending beyond the Life Expectancy of the Participant or the Joint Life and Last Survivor Expectancy of the Participant and the Participant's Designated Beneficiary, or (ii) a period not extending beyond the Life Expectancy of the Designated Beneficiary, the amount required to be distributed for each calendar year, beginning with distributions for the first Distribution Calendar Year, must at least equal the quotient obtained by dividing the Participant's Benefit by the Applicable Life Expectancy.
  - (2) For calendar years beginning before January 1, 1989, if the Participant's spouse is not the Designated Beneficiary, the method of distribution selected must assure that at least fifty percent (50%) of the present value of the amount available for distribution is paid within the Life Expectancy of the Participant.
  - (3) For calendar years beginning after December 31, 1988, the amount to be distributed each year, beginning with distributions for the first Distribution Calendar Year shall not be less than the quotient obtained by dividing the Participant's Benefit by the lesser of (i) the Applicable Life

Expectancy, or (ii) if the Participant's spouse is not the Designated Beneficiary, the applicable divisor determined from the table set forth in Q&A-4 of section 1.401(a)(9)-2 of the proposed regulations. Distributions after the death of the Participant shall be distributed using the Applicable Life Expectancy in Subsection (1) as the relevant divisor without regard to Proposed Regulations section 1.401(a)(9)-2.

- (4) The minimum distribution required for the Participant's first Distribution Calendar Year must be made on or before the Participant's Required Beginning Date. The minimum distribution for other calendar years, including the minimum distribution for the Distribution Calendar Year in which the Employee's required beginning date occurs, must be made on or before December 31 of that Distribution Calendar Year.

- (b) Other forms. If the Participant's Benefit is distributed in the form of an annuity purchased from an insurance company, distributions thereunder shall be made in accordance with the requirements of section 401(a)(9) of the Code and the proposed regulations thereunder.

**10.05 Death Distribution Provisions.** Upon the death of the Participant, the following distribution provisions shall take effect:

- (a) If the Participant dies after distribution of his/her interest has commenced, the remaining portion of such interest shall continue to be distributed at least as rapidly as under the method of distribution being used prior to the Participant's death.
- (b) If the Participant dies before distribution of his/her interest commences, the Participant's entire interest will be distributed no later than December 31 of the calendar year containing the fifth (5th) anniversary of the Participant's death except to the extent that an election is made to receive distributions in accordance with (1) or (2) below:
  - (1) If any portion of the Participant's interest is payable to a Designated Beneficiary, distributions may be made over the life or over a period certain not greater than the Life Expectancy of the Designated Beneficiary commencing on or before December 31 of the calendar year immediately following the calendar year in which the Participant died;
  - (2) If the Designated Beneficiary is the Participant's surviving spouse, the date distributions are required to begin in accordance with Subsection (1) shall not be earlier than the later of (i) December 31 of the calendar year immediately following the calendar year in which the Participant died, and (ii) December 31 of the calendar year in which the Participant would have attained age seventy and one-half (70-1/2).

If the Participant has not made an election pursuant to this Subsection by the time of his/her death, the Participant's Designated Beneficiary must elect the method of distribution no later than the earlier of (i) December 31 of the calendar year in which distributions would be required to begin under this Section, or (ii) December 31 of the calendar year which contains the fifth (5th) anniversary of the date of death of the Participant. If the Participant has no Designated Beneficiary, or if the Designated Beneficiary does not elect a method of distribution, distribution of the Participant's entire interest must be completed by December 31 of the calendar year containing the fifth (5th) anniversary of the Participant's death.

- (c) For purposes of Subsection (b), if the surviving spouse dies after the Participant, but before payments to such spouse begin, the provisions of Subsection (b), with the exception of paragraph (2) therein, shall be applied as if the surviving spouse were the Participant.

- (d) For purposes of this Section, any amount paid to a child of the Participant will be treated as if it had been paid to the surviving spouse if the amount becomes payable to the surviving spouse when the child reaches the age of majority.
- (e) For the purposes of this Section, distribution of a Participant's interest is considered to begin on the Participant's Required Beginning Date (or, if Subsection (c) is applicable, the date distribution is required to begin to the surviving spouse pursuant to Subsection (b)). If distribution in the form of an annuity irrevocably commences to the participant before the Required Beginning Date, the date distribution is considered to begin is the date distribution actually commences.

**10.06 Definitions.** For the purposes of this Section, the following definitions shall apply:

- (a) **Applicable Life Expectancy.** The Life Expectancy (or Joint and Last Survivor Expectancy) calculated using the attained age of the Participant (or Designated Beneficiary) as of the Participant's (or Designated Beneficiary's) birthday in the applicable calendar year reduced by one (1) for each calendar year which has elapsed since the date Life Expectancy was first calculated. If Life Expectancy is being recalculated, the Applicable Life Expectancy shall be the Life Expectancy as so recalculated. The applicable calendar year shall be the first Distribution Calendar Year, and if Life Expectancy is being recalculated such succeeding calendar year.
- (b) **Designated Beneficiary.** The individual who is designated as the Beneficiary under the Plan in accordance with section 401(a)(9) of the Code and the proposed regulations thereunder.
- (c) **Distribution Calendar Year.** A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin pursuant to Section 10.05 above.
- (d) **Life Expectancy.** The Life Expectancy and joint and last survivor expectancy, respectively, as computed by use of the expected return multiples in Tables V and VI of section 1.72-9 of the income tax regulations. Unless otherwise elected by the Participant (or spouse, in the case of distributions described in Section 10.05(b)(2) above) by the time distributions are required to begin, Life Expectancies shall be recalculated annually. Such election shall be irrevocable as to the Participant (or spouse) and shall apply to all subsequent years. The Life Expectancy of a nonspouse Beneficiary may not be recalculated.
- (e) **Participant's Benefit.**
  - (1) The Account balance as of the last Accounting Date in the calendar year immediately preceding the Distribution Calendar Year (valuation calendar year) increased by the amount of any contributions or forfeitures allocated to the Account balance as of dates in the valuation calendar year after such Accounting Date and decreased by distributions made in the valuation calendar year after such Accounting Date.
  - (2) For purposes of paragraph (1) above, if any portion of the minimum distribution for the first Distribution Calendar Year is made in the second Distribution Calendar Year on or before the Required Beginning Date, the amount of the minimum distribution made in the second Distribution Calendar Year shall be treated as if it had been made in the immediately preceding Distribution Calendar Year.

- (f) **Required Beginning Date.** The Required Beginning Date of a Participant is the first day of April of the calendar year following the calendar year in which the Participant attains age seventy and one-half (70-1/2), or such later date as permitted under this Section or section 401(a)(9) of the Code.

## **XI. MODES OF DISTRIBUTION OF BENEFITS**

**11.01 Normal Mode of Distribution.** Unless an elective mode of distribution is elected in accordance with Article XII, benefits shall be paid to the Participant in the form provided for in Article XII.

**11.02 Elective Mode of Distribution.** Subject to the requirements of Articles X and XII, a Participant may revocably elect to have his/her Account distributed in any one (1) of the following modes in lieu of the mode described in Section 11.01:

- (a) **Equal Payments.** Equal monthly, quarterly, semi-annual, or annual payments in an amount chosen by the Participant continuing until the Account is exhausted.
- (b) **Lump Sum.** A lump sum payment.
- (c) **Period Certain.** Approximately equal monthly, quarterly, semi-annual, or annual payments, calculated to continue for a period certain chosen by the Participant.
- (d) **Other.** Any other sequence of payments requested by the Participant.

**11.03 Election of Mode.** Except as otherwise provided in Section 12.04(a), a Participant's election of a payment option must be made in writing between thirty (30) and ninety (90) days before the payment of benefits is to commence.

**11.04 Death Benefits.** Subject to Articles X and XII,

- (a) In the case of a Participant who dies before he/she has begun receiving benefit payments, the Participant's entire Nonforfeitable Interest shall then be payable to his/her Beneficiary within ninety (90) days of the Participant's death. A Beneficiary who is entitled to receive benefits under this Section may elect to have benefits commence at a later date, subject to the provisions of Section 10.05. The Beneficiary may elect to receive the death benefit in any of the forms available to the Participant under Section 11.02. If the Beneficiary is the Participant's Surviving Spouse, and such Surviving Spouse dies before payment commences, then this Section shall apply to the beneficiary of the Surviving Spouse as though such Surviving Spouse were the Participant.
- (b) Should the Participant die after he/she has begun receiving benefit payments, the Beneficiary shall receive the remaining benefits, if any, that are payable, under the payment schedule elected by the Participant. Notwithstanding the foregoing, the Beneficiary may elect to accelerate payments of the remaining balances, including but not limited to, a lump sum distribution.

## **XII. SPOUSAL BENEFIT REQUIREMENTS**

**12.01 Application.** The provisions of this Article shall take precedence over any conflicting provision in this Plan. The provisions of this Article shall apply to any Participant who is credited with any Period of Service with the Employer on or after August 23, 1984, and such other Participants as provided in Section 12.05.



**12.02 Qualified Joint and Survivor Annuity.** Unless an optional form of benefit is selected pursuant to a Qualified Election within the ninety (90) day period ending on the Annuity Starting Date, a married Participant's Vested Account Balance will be paid in the form of a Qualified Joint and Survivor Annuity and an unmarried Participant's Vested Account Balance will be paid in the form of a Straight Life Annuity. The Participant may elect to have such annuity distributed upon the attainment of the Earliest Retirement Age under the Plan.

**12.03 Qualified Preretirement Survivor Annuity.** If a Participant dies before the Annuity Starting Date, then fifty percent (50%) of the Participant's Vested Account Balance shall be applied toward the purchase of an annuity for the life of the Surviving Spouse; the remaining portion shall be paid to such Beneficiaries (which may include such Spouse) designated by the Participant. Notwithstanding the foregoing, the Participant may waive the spousal annuity by designating a different Beneficiary within the Election Period pursuant to a Qualified Election. To the extent that less than one hundred percent (100%) of the vested Account balance is paid to the Surviving Spouse, the amount of the Participant's Account derived from Employee contributions will be allocated to the Surviving Spouse in the same proportion as the amount of the Participant's Account derived from Employee contributions is to the Participant's total Vested Account Balance. The Surviving Spouse may elect to have such annuity distributed within a reasonable period after the Participant's death. Further, such Spouse may elect to receive any death benefit payable to him/her hereunder in any of the forms available to the Participant under Section 11.02.

**12.04 Notice Requirements.**

- (a) In the case of a Qualified Joint and Survivor Annuity as described in Section 12.02, the Plan Administrator shall, no less than thirty (30) days and no more than ninety (90) days prior to the Annuity Starting Date, provide each Participant a written explanation of: (i) the terms and conditions of a Qualified Joint and Survivor Annuity; (ii) the Participant's right to make and the effect of an election to waive the Qualified Joint and Survivor Annuity form of benefit; (iii) the rights of a Participant's Spouse; and (iv) the right to make, and the effect of, a revocation of a previous election to waive the Qualified Joint and Survivor Annuity. However, if the Participant, after having received the written explanation, affirmatively elects a form of distribution and the Spouse consents to that form of distribution (if necessary), benefit payments may commence less than 30 days after the written explanation was provided to the Participant, provided that the following requirements are met:
  - (1) The Plan Administrator provides information to the Participant clearly indicating that the Participant has a right to at least 30 days to consider whether to waive the Qualified Joint and Survivor Annuity and consent to a form of distribution other than a Qualified Joint and Survivor Annuity;
  - (2) The Participant is permitted to revoke an affirmative distribution election at least until the Annuity Starting Date, or if later, at any time prior to the expiration of the 7-day period that begins the day after the explanation of the Qualified Joint and Survivor Annuity is provided to the Participant;
  - (3) The Annuity Starting Date is after the date that the explanation of the Qualified Joint and Survivor Annuity is provided to the Participant; and
  - (4) Distribution in accordance with the affirmative election does not commence before the expiration of the 7-day period that begins after the day after the explanation of the Qualified Joint and Survivor Annuity is provided to the Participant.
- (b) In the case of a qualified preretirement survivor annuity as described in Section 12.03, the Plan Administrator shall provide each Participant within the applicable period for such Participant a written explanation of the qualified pre-retirement survivor annuity in such terms and in such manner as would be

comparable to the explanation provided for meeting the requirements of Subsection (a) applicable to a Qualified Joint and Survivor Annuity.

The applicable period for a Participant is whichever of the following periods ends last: (i) the period beginning with the first day of the Plan Year in which the Participant attains age thirty-two (32) and ending with the close of the Plan Year preceding the Plan Year in which the Participant attains age thirty-five (35); (ii) a reasonable period ending after the individual becomes a Participant; (iii) a reasonable period ending after Subsection (c) ceases to apply to the Participant; (iv) a reasonable period ending after this Article first applies to the Participant. Notwithstanding the foregoing, notice must be provided within a reasonable period ending after separation from service in the case of a Participant who separates from service before attaining age thirty-five (35).

For purposes of applying the preceding paragraph, a reasonable period ending after the enumerated events described in (ii), (iii) and (iv) is the end of the two (2) year period beginning one (1) year prior to the date the applicable event occurs, and ending one (1) year after that date. In the case of a Participant who separates from service before the Plan Year in which age thirty-five (35) is attained, notice shall be provided within the two (2) year period beginning one (1) year prior to separation and ending one (1) year after separation. If such a Participant thereafter returns to employment with the Employer, the applicable period for such Participant shall be redetermined.

- (c) Notwithstanding the other requirements of this Section, the respective notices prescribed by this Section need not be given to a Participant if (1) the Plan "fully subsidizes" the costs of a Qualified Joint and Survivor Annuity or qualified preretirement survivor annuity, and (2) the Plan does not allow the Participant to waive the Qualified Joint and Survivor Annuity or qualified preretirement survivor annuity and does not allow a married Participant to designate a non-Spouse Beneficiary. For purposes of this Subsection (c), a plan fully subsidizes the costs of a benefit if no increase in cost or decrease in benefits to the Participant may result from the Participant's failure to elect another benefit.

**12.05 Definitions.** For the purposes of this Section, the following definitions shall apply:

- (a) **Annuity Starting Date.** The first day of the first period for which an amount is paid as an annuity or any other form.
- (b) **Election Period.** The period which begins on the first day of the Plan Year in which the Participant attains age thirty-five (35) and ends on the date of the Participant's death. If a Participant separates from service prior to the first day of the Plan Year in which age thirty-five (35) is attained, with respect to the Account balance as of the date of separation, the Election Period shall begin on the date of separation.

**Pre-age thirty-five (35) waiver.** A Participant who will not yet attain age thirty-five (35) as of the end of any current Plan Year may make a special Qualified Election to waive the qualified preretirement survivor annuity for the period beginning on the date of such election and ending on the first day of the Plan Year in which the Participant will attain age thirty-five (35). Such election shall not be valid unless the Participant receives a written explanation of the qualified preretirement survivor annuity in such terms as are comparable to the explanation required under Section 13.04(a). Qualified preretirement survivor annuity coverage will be automatically reinstated as of the first day of the Plan Year in which the Participant attains age thirty-five (35). Any new waiver on or after such date shall be subject to the full requirements of this Article.

- (c) **Earliest Retirement Age.** The earliest date on which, under the Plan, the Participant could elect to receive retirement benefits.

- (d) **Qualified Election:** A waiver of a Qualified Joint and Survivor Annuity or a qualified preretirement survivor annuity. Any waiver of a Qualified Joint and Survivor Annuity or a qualified preretirement survivor annuity shall not be effective unless: (a) the Participant's Spouse consents in writing to the election; (b) the election designates a specific Beneficiary, including any class of Beneficiaries or any contingent Beneficiaries, which may not be changed without spousal consent (or the Spouse expressly permits designations by the Participant without any further spousal consent); (c) the Spouse's consent acknowledges the effect of the election; and (d) the Spouse's consent is witnessed by a Plan representative or notary public. Additionally, a Participant's waiver of the Qualified Joint and Survivor Annuity shall not be effective unless the election designates a form of benefit payment which may not be changed without spousal consent (or the Spouse expressly permits designations by the Participant without any further Spousal consent). If it is established to the satisfaction of a Plan representative that there is no Spouse or that the Spouse cannot be located, a waiver will be deemed a Qualified Election.

Any consent by a Spouse obtained under this provision (or establishment that the consent of a Spouse may not be obtained) shall be effective only with respect to such Spouse. A consent that permits designations by the Participant without any requirement of further consent by such Spouse must acknowledge that the Spouse has the right to limit consent to a specific Beneficiary, and a specific form of benefit where applicable, and that the Spouse voluntarily elects to relinquish either or both of such rights. A revocation of a prior waiver may be made by a Participant without the consent of the Spouse at any time before the commencement of benefits. The number of revocations shall not be limited. No consent obtained under this provision shall be valid unless the Participant has received notice as provided in Section 12.04.

- (e) **Qualified Joint and Survivor Annuity:** An immediate annuity for the life of the Participant with a survivor annuity for the life of the Spouse which is not less than fifty percent (50%) and not more than one hundred percent (100%) of the amount of the annuity which is payable during the joint lives of the Participant and the Spouse and which is the amount of benefit which can be purchased with the Participant's Vested Account Balance. The percentage of the survivor annuity shall be fifty percent (50%).
- (f) **Spouse (Surviving Spouse):** The Spouse or Surviving Spouse of the Participant, provided that a former Spouse will be treated as the Spouse or Surviving Spouse and a current Spouse will not be treated as the Spouse or Surviving Spouse to the extent provided under a qualified domestic relations order as described in section 414(p) of the Code.
- (g) **Straight Life Annuity:** An annuity payable in equal installments for the life of the Participant that terminates upon the Participant's death.
- (h) **Vested Account Balance:** The aggregate value of the Participant's vested Account balances derived from Employer and Employee contributions (including rollovers), whether vested before or upon death, including the proceeds of insurance contracts, if any, on the Participant's life. The provisions of this Article shall apply to a Participant who is vested in amounts attributable to Employer Contributions, Employee contributions (or both) at the time of death or distribution.

**12.06 Annuity Contracts.** Where benefits are to be paid in the form of a life annuity pursuant to the terms of this Article, a nontransferable annuity contract shall be purchased from a life insurance company and distributed to the Participant or Surviving Spouse, as applicable. The terms of any annuity contract purchased and distributed by the Plan shall comply with the requirements of this Plan and section 417 of the Code.

### **XIII. LOANS TO PARTICIPANTS**

#### **13.01 Availability of Loans to Participants.**

- (a) If the Employer has elected in the Adoption Agreement to make loans available to Participants, a Participant may apply for a loan from the Plan subject to the limitations and other provisions of this Article.
- (b) The Employer shall establish written guidelines governing the granting of loans, provided that such guidelines are approved by the Plan Administrator and are not inconsistent with the provisions of this Article, and that loans are made available to all Participants on a reasonably equivalent basis.

**13.02 Terms and Conditions of Loans to Participants.** Any loan by the Plan to a Participant under Section 13.01 of the Plan shall satisfy the following requirements:

- (a) Availability. Loans shall be made available to all Participants on a reasonably equivalent basis.
- (b) Nondiscrimination. Loans shall not be made to highly compensated Employees in an amount greater than the amount made available to other Employees.
- (c) Interest Rate. Loans must be adequately secured and bear a reasonable interest rate.
- (d) Loan Limit. No Participant loan shall exceed the present value of the Participant's Nonforfeitable Interest in his/her Account.
- (e) Spousal Consent. A Participant must obtain the consent of his/her Spouse, as defined under Section 12.05 if any, within the ninety (90) day period before the time the Account balance is used as security for the loan. Spousal consent shall be obtained no earlier than the beginning of the ninety (90) day period that ends on the date on which the loan is to be so secured. The consent must be in writing, must acknowledge the effect of the loan, and must be witnessed by a Plan representative or notary public. Such consent shall thereafter be binding with respect to the consenting Spouse or any subsequent Spouse with respect to that loan. A new consent shall be required if the Account balance is used for renegotiation, extension, renewal, or other revision of the loan.
- (f) Foreclosure. In the event of default, foreclosure on the note and attachment of security will not occur until a distributable event occurs in the Plan.
- (g) Reduction of Account. If a valid spousal consent has been obtained in accordance with Subsection (e), then, notwithstanding any other provision of this Plan, the portion of the Participant's vested Account balance used as a security interest held by the Plan by reason of a loan outstanding to the Participant shall be taken into account for purposes of determining the amount of the Account balance payable at the time of death or distribution, but only if the reduction is used as repayment of the loan. If less than one hundred percent (100%) of the Participant's nonforfeitable Account balance (determined without regard to the preceding sentence) is payable to the surviving spouse, then the Account balance shall be adjusted by first reducing the nonforfeitable Account balance by the amount of the security used as repayment of the loan, and then determining the benefit payable to the surviving spouse.
- (h) Amount of Loan. At the time the loan is made, the principal amount of the loan plus the outstanding balance (principal plus accrued interest) due on any other outstanding loans to the Participant or Beneficiary from the Plan and from all other plans of the Employer that are qualified employer plans under section 72(p)(4) of the Code shall not exceed the least of:
  - (1) \$50,000, reduced by the excess (if any) of
    - (a) The highest outstanding balance of loans from the Plan during the one (1) year period ending on the day before the date on which the loan is made, over

(b) The outstanding balance of loans from the Plan on the date on which such loan is made; or

(2) The greater of

(a) \$10,000, or

(b) One-half (1/2) of the value of the Participant's Nonforfeitable Interest in all of his/her Accounts under this Plan.

For the purpose of the above limitation, all loans from all qualified employer plans under section 72(p)(4) of the Code are aggregated.

- (i) **Application for Loan.** The Participant must give the Employer adequate written notice, as determined by the Employer, of the amount and desired time for receiving a loan. No more than one (1) loan may be made by the Plan to a Participant in any calendar year. No loan shall be approved if an existing loan from the Plan to the Participant is in default to any extent.
- (j) **Length of Loan.** The terms of any loan issued or renegotiated after December 31, 1993, shall require the Participant to repay the loan in substantially equal installments of principal and interest, at least monthly, over a period that does not exceed five (5) years from the date of the loan; provided, however, that if the proceeds of the loan are applied by the Participant to acquire any dwelling unit that is to be used within a reasonable time (determined at the time the loan is made) after the loan is made as the principal residence of the Participant, the five (5) year limit shall not apply. In this event, the period of repayment shall not exceed a reasonable period determined by the Employer. Principal installments and interest payments otherwise due may be suspended during an authorized leave of absence, if the promissory note so provides, but not beyond the original term permitted under this Subsection (j), with a revised payment schedule (within such term) instituted at the end of such period of suspension.
- (k) **Prepayment.** The Participant shall be permitted to repay the loan in whole or in part at any time prior to maturity, without penalty.
- (l) **Note.** The loan shall be evidenced by a promissory note executed by the Participant and delivered to the Employer, and shall bear interest at a reasonable rate determined by the Employer.
- (m) **Security.** The loan shall be secured by an assignment of that portion the Participant's right, title and interest in and to his/her Employer Contribution Account (to the extent vested), Participant Contribution Account, and Portable Benefits Account that is equal to fifty percent (50%) of the Participant's Account (to the extent vested).
- (n) **Assignment or Pledge.** For the purposes of paragraphs (h) and (i), assignment or pledge of any portion of the Participant's interest in the Plan and a loan, pledge, or assignment with respect to any insurance contract purchased under the Plan, will be treated as a loan.
- (o) **Other Terms and Conditions.** The Employer shall fix such other terms and conditions of the loan as it deems necessary to comply with legal requirements, to maintain the qualification of the Plan and Trust under section 401(a) of the Code, or to prevent the treatment of the loan for tax purposes as a distribution to the Participant. The Employer, in its discretion for any reason, may fix other terms and conditions of the loan, not inconsistent with the provisions of this Article.

### **13.03 Participant Loan Accounts.**

- (a) Upon approval of a loan to a Participant by the Employer, an amount not in excess of the loan shall be transferred from the Participant's other investment fund(s), described in Section 6.05 of the Plan, to the Participant's Loan Account as of the Accounting Date immediately preceding the agreed upon date on which the loan is to be made.
- (b) The assets of a Participant's Loan Account may be invested and reinvested only in promissory notes received by the Plan from the Participant as consideration for a loan permitted by Section 13.01 of the Plan or in cash. Uninvested cash balances in a Participant's Loan Account shall not bear interest. No person who is otherwise a fiduciary of the Plan shall be liable for any loss, or by reason of any breach, that results from the Participant's exercise of such control.
- (c) Repayment of principal and payment of interest shall be made by payroll deduction or, where repayment cannot be made by payroll deduction, by check, and shall be invested in one (1) or more other investment funds, in accordance with Section 6.05 of the Plan, as of the next Accounting Date after payment thereof to the Trust. The amount so invested shall be deducted from the Participant's Loan Account.
- (d) The Employer shall have the authority to establish other reasonable rules, not inconsistent with the provisions of the Plan, governing the establishment and maintenance of Participant Loan Accounts.

## **XIV. PLAN AMENDMENT, TERMINATION AND OPTIONAL PROVISIONS**

**14.01 Amendment by Employer.** The Employer reserves the right, subject to Section 14.02 of the Plan, to amend the Plan from time to time by either:

- (a) Filing an amended Adoption Agreement to change, delete, or add any optional provision, or
- (b) Continuing the Plan in the form of an amended and restated Plan and Trust.

No amendment to the Plan shall be effective to the extent that it has the effect of decreasing a Participant's accrued benefit. Notwithstanding the preceding sentence, a Participant's Account balance may be reduced to the extent permitted under section 412(c)(8) of the Code. For purposes of this paragraph, a Plan amendment which has the effect of decreasing a Participant's Account balance or eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment shall be treated as reducing an accrued benefit. Furthermore, if the vesting schedule of the Plan is amended, in the case of an Employee who is a Participant as of the later of the date such amendment is adopted or the date it becomes effective, the nonforfeitable percentage (determined as of such date) of such Employee's right to his/her Employer-derived accrued benefit will not be less than his percentage computed under the plan without regard to such amendment.

The Employer may (1) change the choice of options in the Adoption Agreement, (2) add overriding language in the Adoption Agreement when such language is necessary to satisfy sections 415 or 416 of the Code because of the required aggregation of multiple plans, and (3) add certain model amendments published by the Internal Revenue Service.

**14.02 Amendment of Vesting Schedule.** If the Plan's vesting schedule is amended, or the Plan is amended in any way that directly or indirectly affects the computation of the Participant's nonforfeitable percentage, each Participant may elect, within a reasonable period after the adoption of the amendment or change, to have the nonforfeitable percentage computed under the Plan without regard to such amendment or change.

The period during which the election may be made shall commence with the date the amendment is adopted or deemed to be made and shall end on the latest of:

- (a) Sixty (60) days after the amendment is adopted;
- (b) Sixty (60) days after the amendment becomes effective; or
- (c) Sixty (60) days after the Participant is issued written notice of the amendment by the Employer or Plan Administrator.

**14.03 Termination by Employer.** The Employer reserves the right to terminate this Plan. However, in the event of such termination no part of the Trust shall be used or diverted to any purpose other than for the exclusive benefit of the Participants or their Beneficiaries, except as provided in this Section.

Upon Plan termination or partial termination, all Account balances shall be valued at their fair market value and the Participant's right to his/her Employer Contribution Account shall be one hundred percent (100%) vested and nonforfeitable. Such amount and any other amounts held in the Participant's other Accounts shall be maintained for the Participant until paid pursuant to the terms of the Plan.

Any amounts held in a suspense account, after all liabilities of the Plan to Participants and Beneficiaries have been satisfied or provided for, shall be paid to the Employer in accordance with the Code and regulations thereunder.

In the event that the Commissioner of Internal Revenue determines that the Plan is not initially qualified under the Internal Revenue Code, any contribution made by the Employer incident to that initial qualification must be returned to the Employer within one year after the date the initial qualification is denied, but only if the application for the qualification is made by the time prescribed by law for filing the Employer's return for the year in which the Plan is adopted, or such later date as the Secretary of the Treasury may prescribe.

**14.04 Discontinuance of Contributions.** A permanent discontinuance of contributions to the Plan by the Employer, unless an amended and restated Plan is established, shall constitute a Plan termination.

**14.05 Amendment by Plan Administrator.** The Plan Administrator may amend this Plan upon thirty (30) days written notification to the Employer; provided, however, that any such amendment must be for the express purpose of maintaining compliance with applicable federal laws and regulations of the Internal Revenue Service. Such amendment shall become effective unless, within such 30-day period, the Employer notifies the Administrator, in writing, that it disapproves such amendment, in which case such amendment shall not become effective. In the event of such disapproval, the Administrator shall be under no obligation to continue acting as Administrator hereunder.

**14.06 Optional Provisions.** Any provision which is optional under this Plan shall become effective if and only if elected by the Employer and agreed to by the Plan Administrator.

## **XV. ADMINISTRATION**

**15.01 Powers of the Employer.** The Employer shall have the following powers and duties:

- (a) To appoint and remove, with or without cause, the Plan Administrator;
- (b) To amend or terminate the Plan pursuant to the provisions of Article XIV;
- (c) To appoint a committee to facilitate administration of the Plan and communications to Participants;

- (d) To decide all questions of eligibility (1) for Plan participation, and (2) upon appeal by any Participant, Employee or Beneficiary, for the payment of benefits;
- (e) To engage an independent qualified public accountant, when required to do so by law, to prepare annually the audited financial statements of the Plan's operation;
- (f) To take all actions and to communicate to the Plan Administrator in writing all necessary information to carry out the terms of the Plan and Trust; and
- (g) To notify the Plan Administrator in writing of the termination of the Plan.

**15.02 Duties of the Plan Administrator.** The Plan Administrator shall have the following powers and duties:

- (a) To construe and interpret the provisions of the Plan;
- (b) To maintain and provide such returns, reports, schedules, descriptions, and individual Account statements, as are required by law within the times prescribed by law; and to furnish to the Employer, upon request, copies of any or all such materials, and further, to make copies of such instruments, reports, descriptions, and statements as are required by law available for examination by Participants and such of their Beneficiaries who are or may be entitled to benefits under the Plan in such places and in such manner as required by law;
- (c) To obtain from the Employer such information as shall be necessary for the proper administration of the Plan;
- (d) To determine the amount, manner, and time of payment of benefits hereunder;
- (e) To appoint and retain such agents, counsel, and accountants for the purpose of properly administering the Plan;
- (f) To distribute assets of the Trust to each Participant and Beneficiary in accordance with Article X of the Plan;
- (g) To pay expenses from the Trust pursuant to Section 6.03 of the Plan; and
- (h) To do such other acts reasonably required to administer the Plan in accordance with its provisions or as may be provided for or required by law.

**15.03 Protection of the Employer.** The Employer shall not be liable for the acts or omissions of the Plan Administrator, but only to the extent that such acts or omissions do not result from the Employer's failure to provide accurate or timely information as required or necessary for proper administration of the Plan.

**15.04 Protection of the Plan Administrator.** The Plan Administrator may rely upon any certificate, notice or direction purporting to have been signed on behalf of the Employer which the Plan Administrator believes to have been signed by a duly designated official of the Employer.

**15.05 Resignation or Removal of Plan Administrator.** The Plan Administrator may resign at any time effective upon sixty (60) days prior written notice to the Employer. The Plan Administrator may be removed by the Employer at any time upon sixty (60) days prior written notice to the Plan Administrator. Upon the resignation or removal of the Plan Administrator, the Employer may appoint a successor Plan Administrator; failing such appointment, the Employer shall assume the powers and duties of Plan Administrator. Upon the resignation or removal of the Plan



Administrator, any Trust assets invested by or held in the name of the Plan Administrator shall be transferred to the trustee in cash or property, at fair market value, except that the return of Trust assets invested in a contract issued by an insurance company shall be governed by the terms of that contract.

**15.06 No Termination Penalty.** The Plan Administrator shall have no authority or discretion to impose any termination penalty upon its removal.

**15.07 Decisions of the Plan Administrator.** All constructions, determinations, and interpretations made by the Plan Administrator pursuant to Section 15.02(a) or (d) shall be final and binding on all persons participating in the Plan, given deference in all courts of law to the greatest extent allowed by applicable law, and shall not be overturned or set aside by any court of law unless found to be arbitrary or capricious, or made in bad faith.

## **XVI. MISCELLANEOUS**

**16.01 Nonguarantee of Employment.** Nothing contained in this Plan shall be construed as a contract of employment between the Employer and any Employee, or as a right of an Employee to be continued in the employment of the Employer, as a limitation of the right of the Employer to discharge any of its Employees, with or without cause.

**16.02 Rights to Trust Assets.** No Employee or Beneficiary shall have any right to, or interest in, any assets of the Trust upon termination of his/her employment, or otherwise, except as provided from time to time under this Plan, and then only to the extent of the Benefits payable under the Plan to such Employee or Beneficiary out of the assets of the Trust. All payments of benefits as provided for in this Plan shall be made solely out of the assets of the Trust and none of the fiduciaries shall be liable therefor in any manner.

**16.03 Nonalienation of Benefits.** Except as provided in Section 16.04 of the Plan, benefits payable under this Plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution, or levy of any kind, either voluntary or involuntary, prior to actually being received by the person entitled to the benefit under the terms of the Plan; and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of any right to benefits payable hereunder, shall be void. The Trust shall not in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to benefits hereunder.

**16.04 Qualified Domestic Relations Order.** Notwithstanding Section 16.03 of the Plan, amounts may be paid with respect to a Participant pursuant to a domestic relations order, but if and only if the order is determined to be a qualified domestic relations order within the meaning of section 414(p) of the Code or any domestic relations order entered before January 1, 1985.

**16.05 Nonforfeitability of Benefits.** Subject only to the specific provisions of this Plan, nothing shall be deemed to deprive a Participant of his/her right to the Nonforfeitable Interest to which he/she becomes entitled in accordance with the provisions of the Plan.

**16.06 Incompetency of Payee.** In the event any benefit is payable to a minor or incompetent, to a person otherwise under legal disability, or to a person who, in the sole judgment of the Employer, is by reason of advanced age, illness, or other physical or mental incapacity incapable of handling the disposition of his/her property, the Employer may apply the whole or any part of such benefit directly to the care, comfort, maintenance, support, education, or use of such person or pay or distribute the whole or any part of such benefit to:

(a) The parent of such person;

(b) The guardian, committee, or other legal representative, wherever appointed, of such person;

- (c) The person with whom such person resides;
- (d) Any person having the care and control of such person; or
- (e) Such person personally.

The receipt of the person to whom any such payment or distribution is so made shall be full and complete discharge therefor.

**16.07 Inability to Locate Payee.** Anything to the contrary herein notwithstanding, if the Employer is unable, after reasonable effort, to locate any Participant or Beneficiary to whom an amount is payable hereunder, such amount shall be forfeited and held in the Trust for application against the next succeeding Employer Contribution or contributions required to be made hereunder. Notwithstanding the foregoing, however, such amount shall be reinstated, by means of an additional Employer contribution, if and when a claim for the forfeited amount is subsequently made by the Participant or Beneficiary or if the Employer receives proof of death of such person, satisfactory to the Employer. To the extent not inconsistent with applicable law, any benefits lost by reason of escheat under applicable state law shall be considered forfeited and shall not be reinstated.

**16.08 Mergers, Consolidations, and Transfer of Assets.** The Plan shall not be merged into or consolidated with any other plan, nor shall any of its assets or liabilities be transferred into any such other plan, unless each Participant in the Plan would (if the Plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer, that is equal to or greater than the benefit he/she would have been entitled to receive immediately before the merger, consolidation, or transfer (if the Plan had then terminated).

**16.09 Employer Records.** Records of the Employer as to an Employee's or Participant's Period of Service, termination of service and the reason therefor, leaves of absence, reemployment, Earnings, and Compensation will be conclusive on all persons, unless determined to be incorrect.

**16.10 Gender and Number.** The masculine pronoun, whenever used herein, shall include the feminine pronoun, and the singular shall include the plural, except where the context requires otherwise.

**16.11 Applicable Law.** The Plan shall be construed under the laws of the State where the Employer is located, except to the extent superseded by federal law. The Plan is established with the intent that it meets the requirements under the Code. The provisions of this Plan shall be interpreted in conformity with these requirements.

In the event of any conflict between the Plan and a policy or contract issued hereunder, the Plan provisions shall control; provided, however, no Plan amendment shall supersede an existing policy or contract unless such amendment is required to maintain qualification under section 401(a) and 414(d) of the Code.

# **DECLARATION OF TRUST**

## DECLARATION OF TRUST

This Declaration of Trust (the "Group Trust Agreement") is made as of the 19th day of May, 2001, by **VantageTrust Company**, which declares itself to be the sole Trustee of the trust hereby created.

**WHEREAS**, the ICMA Retirement Trust was created as a vehicle for the commingling of the assets of governmental plans and governmental units described in Section 818(a)(6) of the Internal Revenue Code of 1986, as amended, pursuant to a Declaration of Trust dated October 4, 1982, as subsequently amended, a copy of which is attached hereto and incorporated by reference as set out below (the "ICMA Declaration"); and

**WHEREAS**, the trust created hereunder (the "Group Trust") is intended to meet the requirements of Revenue Ruling 81-100, 1981-1 C.B. 326, and is established as a common trust fund within the meaning of Section 391.1 of Title 35 of the New Hampshire Revised Statutes Annotated, to accept and hold for investment purposes the assets of the Deferred Compensation and Qualified Plans held by and through the ICMA Retirement Trust.

**NOW, THEREFORE**, the Group Trust is created by the execution of this Declaration of Trust by the Trustee and is established with respect to each Deferred Compensation and Qualified Plan by the transfer to the Trustee of such Plan's assets in the ICMA Retirement Trust, by the Trustees thereof, in accord with the following provisions:

1. **Incorporation of ICMA Declaration by Reference; ICMA By-Laws.** Except as otherwise provided in this Group Trust Agreement, and to the extent not inconsistent herewith, all provisions of the ICMA Declaration are incorporated herein by reference and made a part hereof, to be read by substituting the Group Trust for the Retirement Trust and the Trustee for the Board of Trustees referenced therein. In this respect, unless the context clearly indicates otherwise, all capitalized terms used herein and defined in the ICMA Declaration have the meanings assigned to them in the ICMA Declaration. In addition, the By-Laws of the ICMA Retirement Trust, as the same may be amended from time-to-time, are adopted as the By-Laws of the Group Trust to the extent not inconsistent with the terms of this Group Trust Agreement.

Notwithstanding the foregoing, the terms of the ICMA Declaration and By-Laws are further modified with respect to the Group Trust created hereunder, as follows:

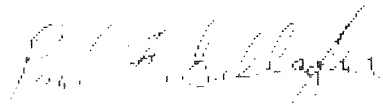
- (a) any reporting, distribution, or other obligation of the Group Trust vis-à-vis any Deferred Compensation Plan, Qualified Plan, Public Employer, Public Employer Trustee, or Employer Trust shall be deemed satisfied to the extent that such obligation is undertaken by the ICMA Retirement Trust (in which case the obligation of the Group Trust shall run to the ICMA Retirement Trust); and
  - (b) all provisions dealing with the number, qualification, election, term and nomination of Trustees shall not apply, and all other provisions relating to trustees (including, but not limited to, resignation and removal) shall be interpreted in a manner consistent with the appointment of a single corporate trustee.
2. **Compliance with Revenue Procedure 81-100.** The requirements of Revenue Procedure 81-100 are applicable to the Group Trust as follows:
  - (a) Pursuant to the terms of this Group Trust Agreement and Article X of the By-Laws, investment in the Group Trust is limited to assets of Deferred Compensation and Qualified Plans, investing through the ICMA Retirement Trust.

- (b) Pursuant to the By-Laws, the Group Trust is adopted as a part of each Qualified Plan that invests herein through the ICMA Retirement Trust.
  - (c) In accord with the By-Laws, that part of the Group Trust's corpus or income which equitably belongs to any Deferred Compensation and Qualified Plan may not be used for or diverted to any purposes other than for the exclusive benefit of the Plan's employees or their beneficiaries who are entitled to benefits under such Plan.
  - (d) In accord with the By-Laws, no Deferred Compensation Plan or Qualified Plan may assign any or part of its equity or interest in the Group Trust, and any purported assignment of such equity or interest shall be void.
3. **Governing Law.** Except as otherwise required by federal, state or local law, this Declaration of Trust (including the ICMA Declaration to the extent incorporated herein) and the Group Trust created hereunder shall be construed and determined in accordance with applicable laws of the State of New Hampshire.
4. **Judicial Proceedings.** The Trustee may at any time initiate an action or proceeding in the appropriate state or federal courts within or outside the state of New Hampshire for the settlement of its accounts or for the determination of any question of construction which may arise or for instructions.

**IN WITNESS WHEREOF,** the Trustee has executed this Declaration of Trust as of the day and year first above written.

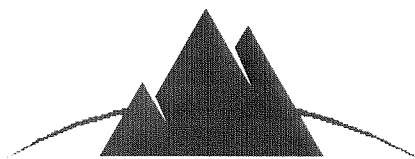
**VANTAGETRUST COMPANY**

By: \_\_\_\_\_



Name: Paul F. Gallagher

Title: Assistant Secretary



**ICMA RETIREMENT CORPORATION**

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